

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

DAVID LENIHAN and JAN LENIHAN,

Plaintiffs,

v.

COMPUTER ASSOCIATES  
INTERNATIONAL, INC.,

Defendant.

C.A. No. 04-11701-DPW

**AFFIDAVIT OF ALEXANDER G. ARATO**

I, Alexander G. Arato, state the following upon personal knowledge. On my oath, I state as follows:

1. My name is Alexander G. Arato. I am a Vice President, Senior Counsel of Computer Associates International, Inc. ("Computer Associates"). I have worked at Computer Associates since February 2000.

2. Computer Associates is a Delaware corporation with its principal place of business in Islandia, New York. I work at Computer Associates's headquarters in Islandia. Islandia is located in the Eastern District of New York.

3. David Lenihan was hired by Computer Associates in October 2002 as a Sales Executive. I have attached a true and accurate copy of Mr. Lenihan's employment application at Tab A. According to his application, Mr. Lenihan graduated from the University of Massachusetts and previously worked for such corporations as National Computer Systems, Inc., Bull HN, and Motorola, Inc.

4. At the inception of his employment, Mr. Lenihan signed an Employment and Confidentiality Agreement (“Employment Agreement”). I have attached a true and accurate copy of the Employment Agreement at Tab B.
5. The Employment Agreement includes the following choice of law provision and forum selection clause: “This Agreement shall be governed by and construed in accordance with the laws of the State of New York. Any action relating to this Agreement or [Lenihan’s] employment by [Computer Associates] shall be brought exclusively in the state or federal courts of the State of New York.”
6. At the bottom of the signature page of the Employment Agreement, there is the following statement: “CAUTION TO EMPLOYEE: This Agreement affects important rights. DO NOT sign it unless you have read it carefully and are satisfied that you understand it completely.”
7. In or around July 2002, Computer Associates began an investigation of suspected inappropriate conduct by various Computer Associates’s employees in its Framingham, Massachusetts office, including Mr. Lenihan. I participated in the investigation with respect to Mr. Lenihan. The other key individuals involved in the investigation of Mr. Lenihan were as follows: Steve Woghin (General Counsel); Grace M. Caden (Vice President of Internal Audit); and Adam Feirstein (Regional Manager, Human Resources). Mr. Woghin, Ms. Caden, and Mr. Feirstein worked in the Islandia office and the investigation was conducted out of the Islandia office.
8. The investigation uncovered that Mr. Lenihan engaged in fraud and a conspiracy to obtain commissions to which he was not entitled. Moreover, Mr. Lenihan refused to cooperate in Computer Associates’s investigation. As a result, on August 19, 2002, Mr. Lenihan’s employment was terminated.

9. On June 21, 2004, Mr. Lenihan and his wife Jan Lenihan filed a complaint against Computer Associates in Middlesex Superior Court in Massachusetts. The complaint alleges seven claims, all of which arise out of Mr. Lenihan's former employment with Computer Associates. On August 2, 2004, Computer Associates removed the action to the United States District Court for the District of Massachusetts.

10. I expect that my testimony will be needed at trial. I expect to testify about my investigation of Mr. Lenihan's conduct and the decision to terminate his employment. I live in East Setauket, New York.

11. I expect that Computer Associates may require the testimony of other witnesses. I have listed below the names of those expected witnesses, the expected areas of testimony, and their residences:

<b>Name and Position</b>	<b>Expected Areas of Testimony</b>	<b>Residence</b>
Stephen Woghin (General Counsel)	Investigation of David Lenihan's conduct and the decision to terminate his employment.	Cold Spring Harbor, New York
Grace M. Caden (Vice President of Internal Audit)	Investigation of David Lenihan's conduct.	Stony Brook, New York
Adam Feirstein (Regional Manager of Human Resources)	Investigation of David Lenihan's conduct.	St. James, New York

12. Given that Computer Associates's headquarters is in Islandia and the key witnesses live in New York, the federal court in the Eastern District of New York would be more convenient for Computer Associates and its witnesses.

13. Most of the documents concerning Mr. Lenihan's employment and Computer Associates's investigation are maintained at Computer Associates's headquarters in Islandia.

These documents include Mr. Lenihan's personnel file and the files concerning the investigation of Mr. Lenihan's conduct.

Signed under the penalties of perjury this 25<sup>th</sup> day of August, 2004.



Alexander G. Arato